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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TRUSTEES OF THE PLUMBERS AND
PIPEFITTERS NATIONAL PENSION FUND;
et al.,

Civil No. 07-3039-CL

ORDER

Plaintiffs,

v.

RI-PAM LLC; and JON RED HORSE,

Defendants.

PANNER, District Judge:

Plaintiffs have filed a motion to dismiss lawsuit (#52) without prejudice and without an award of attorney's fees or costs to any party. Defendants do not object to the dismissal.

I. DISCUSSION

After a defendant has filed an answer or motion for summary judgment, an action may be dismissed voluntarily at plaintiff's request only by order of the court and "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). In the Ninth Circuit, "Although costs and attorney fees are often imposed upon a plaintiff who is granted a voluntary dismissal under Fed.R.Civ.P. 41(a)(2), no circuit court has held that payment of the defendant's costs and attorney fees is a prerequisite to an order granting voluntary dismissal." Stevedoring Servs. of Am. v. Armilla Int'l B.V., 889 F.2d 919, 921 (9th Cir. 1989) (and cases cited); Puerto Rico Maritime Shipping Auth. v. Leith, 668 F.2d

46, 51 (1st Cir. 1981) (cited with approval by Stevedoring Services) [district court did not abuse its discretion in granting voluntary dismissal without imposing costs and attorney's fees]; 9 Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 2366 (2d ed. 1995). Plain legal prejudice does not result to a defendant from the prospect of a second lawsuit or from a missed opportunity for a legal ruling on the merits, but may be shown where actual legal rights are threatened or where monetary or other burdens appear to be extreme or unreasonable. Watson v. Clark, 716 F. Supp. 1354, 1355-56 (D. Nev. 1989), aff'd, 909 F.2d 1490 (9th Cir. 1990) (and cases cited).

Here, plaintiffs state in their motion that dismissal shall be without prejudice to refiling and without fees or costs to any party.

The court finds that, in the circumstances, this action should be dismissed, without prejudice and without fees and costs imposed.

II. ORDER

For the foregoing reasons, plaintiffs' motion to dismiss lawsuit (#52) is granted; this action is dismissed without prejudice and without attorney's fees and costs to any party. Judgment shall be entered dismissing this case, without prejudice, and without fees and costs imposed on any party.

DATED this 2 day of January, 2009.



UNITED STATES DISTRICT JUDGE